

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION**

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of Dwight Wheeler (registration no. 365227), an inmate at Northeast Correctional Center, for leave to commence this action without payment of the required filing fee [Doc. #2]. For the reasons stated below, the Court finds that the plaintiff does not have sufficient funds to pay the entire filing fee and will assess an initial partial filing fee of \$42.62. See 28 U.S.C. § 1915(b)(1). Furthermore, after reviewing the complaint, the Court will partially dismiss the complaint and will order the Clerk to issue process or cause process to be issued on the non-frivolous portions of the complaint.

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must

assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. *Id.*

Plaintiff has submitted an affidavit and a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint. A review of plaintiff's account indicates an average monthly deposit of \$213.12, and an average monthly balance of \$36.67. Plaintiff has insufficient funds to pay the entire filing fee. Accordingly, the Court will assess an initial partial filing fee of \$42.62, which is 20 percent of plaintiff's average monthly deposit.

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if "it lacks an arguable basis in either law or in fact."

Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The Complaint

Plaintiff, a prisoner at Northeast Correctional Center (“NECC”), brings this action under 42 U.S.C. § 1983 for alleged medical mistreatment. Named as defendants are Correctional Medical Services (“CMS”) Jill Perkins (Nurse, CMS), Tammy Harr (same), Thomas Cabrera (Physician, CMS), Elizabeth Conley (Regional Medical Director, CMS), Unknown Sands (same), J. Cofield (Regional Manager, CMS), Scott Lawrence (Warden, NECC), Chantay Godert (Associate Warden, NECC), Thomas Dunn (same), and Doug Prudden (Assistant Warden, NECC).

Plaintiff alleges that he has Hepatitis C virus (“HCV”). Plaintiff claims that defendants Perkins, Harr, Cabrera, Conley, Sands, and Cofield have refused to treat his

HCV. Plaintiff alleges that, as a result of the lack of treatment, his liver is being damaged and he suffers severe pain and other symptoms. Plaintiff says that these defendants have told him that CMS will not provide him with treatment because it is too expensive.

Plaintiff alleges that he wrote letters to defendants Lawrence, Godert, Dunn, and Prudden describing his lack of treatment. Plaintiff claims that these defendants have failed to intervene on his behalf.

Discussion

The complaint survives initial review as to defendants Perkins, Harr, Cabrera, Conley, Sands, Cofield, and CMS. As a result, the Court will order these defendants to respond to the complaint.

“Liability under § 1983 requires a causal link to, and direct responsibility for, the alleged deprivation of rights.” Madewell v. Roberts, 909 F.2d 1203, 1208 (8th Cir. 1990); see also Martin v. Sargent, 780 F.2d 1334, 1338 (8th Cir. 1985) (claim not cognizable under § 1983 where plaintiff fails to allege that defendant was personally involved in or directly responsible for the incidents that injured plaintiff); Boyd v. Knox, 47 F.3d 966, 968 (8th Cir. 1995) (respondeat superior theory inapplicable in § 1983 suits). In the instant action, plaintiff has not set forth any facts indicating that defendants Lawrence, Godert, Prudden, or Dunn were directly involved in or personally

responsible for the alleged violations of his constitutional rights. See Camberos v. Branstad, 73 F.3d 174, 176 (8th Cir. 1995) (“a general responsibility for supervising the operations of a prison is insufficient to establish the personal involvement required to support liability.”); Dulany v. Carnahan, 132 F.3d 1234, 1239 (8th Cir.1997) (“Deliberate indifference may be demonstrated by prison guards who intentionally deny or delay access to medical care or intentionally interfere with prescribed treatment, or by prison doctors who fail to respond to prisoner's serious medical needs.”). As a result, the complaint fails to state a claim upon which relief can be granted as to these defendants.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff shall pay an initial filing fee of \$42.62 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that if plaintiff fails to pay the initial partial filing fee within thirty (30) days of the date of this Order, then this case will be dismissed without prejudice.

IT IS FURTHER ORDERED that the Clerk shall issue process or cause process to issue upon the complaint as to defendants Perkins, Harr, Cabrera, Conley, Cofield, Sands,¹ and Correctional Medical Services.

IT IS FURTHER ORDERED that, pursuant to 42 U.S.C. § 1997e(g)(2), defendants Perkins, Harr, Cabrera, Conley, Cofield, Sands, and Correctional Medical Services shall reply to plaintiff's claims within the time provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

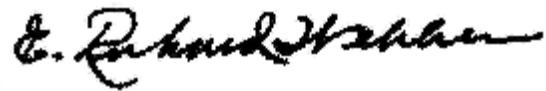
IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint as to defendants Lawrence, Godert, Prudden, or Dunn because, as to these defendants, the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

IT IS FURTHER ORDERED that this case is assigned to Track 5B: Prisoner Standard.

¹These defendants are alleged to be employees of Correctional Medical Services.

An appropriate Order of Partial Dismissal shall accompany this Memorandum
and Order.

Dated this 23rd Day of March, 2009.



E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE